

OFFICE OF THE CLERK

MARCIA M. WALDRON
CLERK

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT
21400 UNITED STATES COURTHOUSE
601 MARKET STREET
PHILADELPHIA 19106-1790
February 20, 2008

TELEPHONE
215-597-2995

Peter T. Dalleo, Clerk
United States District Court
J. Caleb Boggs Federal Building
Lockbox 18
844 King Street
Wilmington, DE 19801-3570

Re: Shabazz v. CMS/FMS Medical System
D. Del. No. (06-cv-00372)

Dear Mr. Dalleo:

Pursuant to Rule 4(d), Federal Rules of Appellate Procedure, and Rule 3.4, Third Circuit Local Appellate Rules, we are forwarding the attached notice of appeal from the District Court order entered February 11, 2008 which was filed with this office in error. See Rule 3(a)(1), Federal Rules of Appellate Procedure and Rule 3.4, Third Circuit Local Appellate Rules. **The notice was placed in prison mail on February 14, 2008 and should be docketed as of that date.**

This document is being forwarded solely to protect the litigant's right to appeal as required by the Federal Rules of Appellate Procedure and Rule 3.4, Third Circuit Local Appellate Rules. Upon receipt of the document, kindly process it according to your Court's normal procedures. If your office has already received the same document, please disregard the enclosed copy to prevent duplication.

Pursuant to Rule 3(a)(1), Federal Rules of Appellate Procedure, a notice of appeal must be filed with the Clerk of the District Court. This Court may not act on an appeal until the notice has been docketed in the District Court and certified to this Court by the District Court Clerk.

Thank you for your assistance in this matter.

Very truly yours,

Marcia M. Waldron, Clerk

By: /s/ Chiquita Dyer
Legal Assistant

Enclosure cc: Al-Muhammad Aleek Shabazz (w/out enclosure)

PaperDocuments

**U.S. District Court
District of Delaware (Wilmington)
CIVIL DOCKET FOR CASE #: 1:06-cv-00372-GMS
Internal Use Only**

Shabazz v. CMS/FSM Medical System et al
Assigned to: Judge Gregory M. Sleet
Demand: \$800,000
Related Cases: 1:00-cv-00392-RRM
1:01-cv-00884-RRM
1:02-cv-00005-RRM
1:95-cv-00509-LON
1:97-cv-00579-LON

Cause: 42:1983 Prisoner Civil Rights

Date Filed: 06/05/2006
Jury Demand: Plaintiff
Nature of Suit: 555 Prisoner: Prison
Conditions
Jurisdiction: Federal Question

Plaintiff

Al-Muhammad Aleek Shabazz
also known as
Roger L. Dennis, Jr.

represented by **Al-Muhammad Aleek Shabazz**
SBI# 241736
Delaware Correctional Center
1181 Paddock Road
Smyrna, DE 19977
PRO SE

V.

Defendant

Warden Thomas Carroll
TERMINATED: 02/09/2007

Defendant

Comm. Stanley W. Taylor
TERMINATED: 02/09/2007

Defendant

First Correctional Medical Services

Defendant

Correctional Medical Services, Inc.
TERMINATED: 02/11/2008

represented by **James Edward Drnec**
Balick & Balick, LLC
711 King Street
Wilmington, DE 19801
(302) 658-4265
Fax: (302) 658-1682

Email: jdrnec@balick.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
06/05/2006	<u>1</u>	MOTION for Leave to Proceed in forma pauperis - filed by Al-Muhammad Aleek Shabazz. (Attachments: # <u>1</u> 6 Months Account Statement)(ead,) (Entered: 06/06/2006)
06/05/2006	<u>2</u>	COMPLAINT filed pursuant to 42:1983 with Jury Demand against CMS/FSM Medical System, Thomas Carroll, Stanley W. Taylor - filed by Al-Muhammad Aleek Shabazz. (Attachments: # <u>1</u> Attachment)(ead,) (Entered: 06/06/2006)
06/14/2006	<u>3</u>	Case assigned to Judge Gregory M. Sleet. Please include the initials of the Judge (GMS) after the case number on all documents filed. (rjb,) (Entered: 06/14/2006)
06/22/2006	<u>3</u>	ORDER granting Motion to Proceed IFP. Filing Fee of \$350.00 Assessed. An initial partial filing fee of \$5.33 shall be required. Plaintiff shall return the attached payment authorization within 30 days. Failure to return payment authorization shall result in dismissal of action without prejudice. (Copy to pltf.). Notice of Compliance deadline set for 7/24/2006. Signed by Judge Gregory M. Sleet on 6/22/06. (mmm) (Entered: 06/22/2006)
06/27/2006	<u>4</u>	Authorization by Al-Muhammad Aleek Shabazz requesting Prison Business Office to disburse payments to the Clerk of the Court. (copy of assessment order and authorization to Prison Business Office) (mmm) (Entered: 06/29/2006)
07/21/2006	<u>5</u>	Letter to Honorable Gregory M. Sleet from Al-Muhammad A. Shabazz regarding request for Order for medical records. (mmm) (Entered: 07/24/2006)
08/10/2006	<u>6</u>	MEMORANDUM AND ORDER DISMISSING the complaint pursuant to 28 U.S.C. Section 1915(e)(2)(B) and Section 1915A(b)(1). The plaintiff is given leave to amend the complaint. The amended complaint shall be filed within thirty (30) days from the date of this order. Signed by Judge Gregory M. Sleet on 8/10/06. (mmm) (Entered: 08/11/2006)
08/15/2006	<u>6</u>	Partial Filing Fee Received from Al-Muhammad Aleek Shabazz: \$ 2.00, receipt number 144429 (copy to DCC business office) (rbe,) (Entered: 08/16/2006)
09/15/2006	<u>7</u>	MOTION for Extension of Time of 30 days to file an Amended Complaint - filed by Al-Muhammad Aleek Shabazz. (mmm) (Entered: 09/19/2006)
09/20/2006	<u>7</u>	SO ORDERED, re <u>7</u> MOTION for Extension of Time filed by Al-Muhammad Aleek Shabazz. The plaintiff will have until October 20,

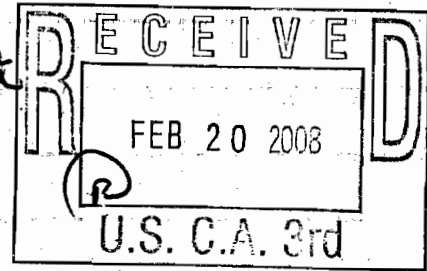
		2006, within which to file his amended complaint. No further extensions will be granted. Signed by Judge Gregory M. Sleet on 9/20/06. (mmm) (Entered: 09/20/2006)
09/20/2006	●	EXIT docket sheet to the pro se plaintiff on 9/20/06.(mmm) (Entered: 09/20/2006)
10/25/2006	●	Partial Filing Fee Received from Al-Muhammad Aleek Shabazz: \$ 0.15, receipt number 145189 (copy to business office) (rpg,) (Entered: 10/26/2006)
10/25/2006	●8	AMENDED COMPLAINT against all defendants- filed by Al-Muhammad Aleek Shabazz.(mmm) (Entered: 10/31/2006)
11/07/2006	□	Partial Filing Fee Received from Al-Muhammad Aleek Shabazz: \$ 7.74, receipt number 145330 (copy to business office) (rpg) (Entered: 11/08/2006)
12/14/2006	●	Partial Filing Fee Received from Al-Muhammad Aleek Shabazz: \$ 2.30, receipt number 145672 (copy to business office) (rpg) (Entered: 12/14/2006)
01/12/2007	●9	MOTION for medical discharge and transfer out of custody to the DE State Hospital - filed by Al-Muhammad Aleek Shabazz. (mmm) (Entered: 01/16/2007)
02/09/2007	●10	MEMORANDUM AND SERVICE ORDER. The claims against the defendants Delaware Department of Correction and the Delaware Correctional Center, Commissioner Stanley Taylor, and Warden Thomas Carroll are DISMISSED without prejudice. The claims against defendants First Correctional Medical Services and Correctional Medical Services are allowed to proceed. Plaintiff shall return to Clerk original USM 285 form(s). Upon receipt, the U.S. Marshal shall serve process as directed by plaintiff. (Copy to pltf.). Signed by Judge Gregory M. Sleet on 2/8/07. (mmm) (Entered: 02/09/2007)
03/13/2007	●	Partial Filing Fee Received from Al-Muhammad Aleek Shabazz: \$ 33.70, receipt number 146829 (copy to business office) (rbe) (Entered: 03/14/2007)
03/19/2007	●	USM 285 forms received for the following defendants: Correctional Medical System and Attorney General of the State of Delaware. (ead) (Entered: 03/29/2007)
03/29/2007	●	CORRECTING ENTRY: The caption has been changed to indicate that First Correctional Medical Services and Correctional Medical Services, Inc. are two separate defendants. (mmm) (Entered: 03/29/2007)
04/09/2007	●	Partial Filing Fee Received from Al-Muhammad Aleek Shabazz: \$.03, receipt number 147140 (copy to business office) (rbe) (Entered: 04/10/2007)
05/04/2007	●11	ORDER denying 9 Motion for Injunctive Relief. Signed by Judge Gregory M. Sleet on 5/4/07. (mmm) (Entered: 05/04/2007)

06/15/2007	● <u>12</u>	ORDER TO SHOW CAUSE. Show Cause Response due by 7/16/2007. Signed by Judge Gregory M. Sleet on 6/15/07. (mmm) (Entered: 06/15/2007)
06/29/2007	●	USM 285 form received for the following defendant: First Correctional Medical Services. (ead) (Entered: 06/29/2007)
06/29/2007	● <u>13</u>	Letter to Clerk of Court from Al-Muhammad Aleek Shabazz regarding USM 285 form. (mmm) (Entered: 07/02/2007)
07/10/2007	● <u>14</u>	Letter to Al-Muhammad Aleek Shabazz from Clerk of Court. The Clerk's Office has received all required USM-285 forms. The complaint, amended complaint and the USM-285 forms will be forwarded to the U.S. Marshal for service in accordance with the Court's Orders. (mmm) (Entered: 07/11/2007)
07/11/2007	●	Exit USM 285 forms to U.S. Marshal (mmm) (Entered: 07/11/2007)
07/19/2007	● <u>15</u>	USM 285 Returned Executed. Attorney General of the State of Delaware served on 7/18/07. (mmm) (Entered: 07/19/2007)
08/07/2007	● <u>16</u>	WAIVER OF SERVICE with 285 form returned executed for First Correctional Medical Services. Waiver sent on 7/31/2007, answer due 10/1/2007. (mmm) (Entered: 08/08/2007)
08/08/2007	●	Partial Filing Fee Received from Al-Muhammad Aleek Shabazz: \$ 3.97, receipt number 148485 (copy of receipt/report to business office). (rbe) (Entered: 08/10/2007)
08/10/2007	● <u>17</u>	NOTICE of Appearance by James Edward Drnec on behalf of Correctional Medical Services, Inc. (Attachments: # <u>1</u> Certificate of Service)(Drnec, James) (Entered: 08/10/2007)
08/10/2007	● <u>18</u>	ANSWER to Amended Complaint by Correctional Medical Services, Inc.. (Attachments: # <u>1</u> Certificate of Service)(Drnec, James) (Entered: 08/10/2007)
08/10/2007	● <u>19</u>	REQUEST for Production of Documents directed to Plaintiff Al-Muhammad Aleek Shabazz a/k/a Roger L. Dennis, Jr. by Correctional Medical Services, Inc.. (Attachments: # <u>1</u> Certificate of Service)(Drnec, James) (Entered: 08/10/2007)
08/10/2007	● <u>20</u>	First INTERROGATORIES Propounded to Plaintiff Al-Muhammad Aleek Shabazz a/k/a Roger L. Dennis, Jr. by Correctional Medical Services, Inc.. (Attachments: # <u>1</u> Certificate of Service)(Drnec, James) (Entered: 08/10/2007)
08/10/2007	● <u>21</u>	MOTION to Dismiss Based upon 18 Del. C. § 6853 - filed by Correctional Medical Services, Inc.. (Attachments: # <u>1</u> Text of Proposed Order # <u>2</u> Exhibit A and B# <u>3</u> Certificate of Service)(Drnec, James) (Entered: 08/10/2007)
08/15/2007	● <u>22</u>	WAIVER OF SERVICE returned executed by Correctional Medical Services, Inc.: For Correctional Medical Services, Inc. waiver sent on

		8/7/2007, answer due 10/9/2007. (Drnec, James) (Entered: 08/15/2007)
08/21/2007	<u>23</u>	ANSWERING BRIEF in Opposition re <u>21</u> MOTION to Dismiss Based upon 18 Del. C. § 6853 filed by Al-Muhammad Aleek Shabazz, Plaintiff's answers to Correctional Medical Services' interrogatories and request for production of documents, and request for an emergency trial. Reply Brief due date per Local Rules is 8/31/2007. (mmm) (Entered: 08/22/2007)
08/21/2007	<u>24</u>	Letter to AlMuhammad Aleek Shabazz from James E. Drnec, Esq. regarding request for Authorization. (Received from the plaintiff for filing with the court). (mmm) (Entered: 08/22/2007)
08/22/2007	<u>25</u>	REPLY to Response to Motion re <u>21</u> MOTION to Dismiss Based upon 18 Del. C. § 6853 filed by Correctional Medical Services, Inc.. (Attachments: # <u>1</u> Certificate of Service)(Drnec, James) (Entered: 08/22/2007)
08/31/2007	<u>26</u>	Letter to James E. Drnec, Esq. from Al-Muhammad Aleek Shabazz regarding discovery requests. (Attachments: # <u>1</u>)(mmm) (Entered: 09/06/2007)
09/12/2007	<u>27</u>	Partial Filing Fee Received from Al-Muhammad Aleek Shabazz: \$ 4.00, receipt number 148855 (copy of receipt/report to business office). (rbe) (Entered: 09/12/2007)
10/12/2007	<u>28</u>	Partial Filing Fee Received from Al-Muhammad Aleek Shabazz: \$.22, receipt number 149194 (copy of receipt/report to business office). (rwc) (Entered: 10/12/2007)
11/20/2007	<u>29</u>	Letter Motion to Amend and Add Defendants; request for docket sheet; and request for updated filing fee ledger. (mmm) (Entered: 11/20/2007)
12/27/2007	<u>30</u>	MOTION to Amend/Correct, MOTION to Appoint Counsel - filed by Al-Muhammad Aleek Shabazz. (mmm) (Entered: 01/07/2008)
02/11/2008	<u>31</u>	MEMORANDUM AND ORDER DENYING <u>30</u> MOTION to Amend/Correct, DENYING without prejudice MOTION to Appoint Counsel filed by Al-Muhammad Aleek Shabazz, and GRANTING <u>21</u> MOTION to Dismiss Based upon 18 Del. C. § 6853 filed by Correctional Medical Services, Inc. Signed by Judge Gregory M. Sleet on 2/11/08. (mmm) (Entered: 02/11/2008)
02/15/2008	<u>32</u>	Letter to Clerk of Court from Al-Muhammed Aleek Shabazz regarding request for clarification - re <u>31</u> Memorandum and Order. (mmm) (Entered: 02/19/2008)

United States Court OS Appeals

For The Third Circuit



3 RD

Circuit

Court

In The United States District Court
For The District of Delaware

Al-Muhammad Abock Shabazz
aka Roger A. Dennis Jr.
Plaintiff,

Civil. Action No. 06-372-GMS

v.
Sist Correctional Medical Services
and Correctional Medical Services, Inc.,
Defendants.

~~Appendix~~ Appeal to the 3rd Circuit Court

1st I am the plaintiff, Al-Muhammad Abock Shabazz, an inmate at the Delaware Correctional Center (DCC), and I filed this action pursuant to 42 U.S.C. § 1983. I went pro se and was granted to leave in forma pauperis pursuant to 28 U.S.C. § 1915. My first amended complaint was deliberate indifference to my serious medical needs after I sustained injury to my ear.

I asked and filed motion to Defendants Counsel and to the Judge of this case a motion to amend and for appointment of Counsel.

On Wednesday Feb 12th 08 I received a order dated Feb 11th 08 granting dismissal of CMS suit, and my motion to denied & appointment of Counsel denied said without prejudice; but it seems to me it is prejudice when this is one of the biggest prison lawsuits in history again CMS & DCC Corporation.

That's why it is imperative to re-open this case and grant my motions beings I'm going up against a major Corporation.

(Page two) and of all that the court realizes there is no attorney motives, its just that those people whom done wrong need to be brought to justice like I was whom I did wrong. That's why I need a lawyer because in the order you claim I made no reference to medical malpractice claims, nor did I include an affidavit of merit signed by an expert witness with the complaint.

Not true for the first part and for the second part that's why I should be granted legal counsel to defend me.

You all took and took money off my books, and then now almost 2 yrs later you try to order for this case to be dismissed.

I can't and I won't let this go. My injuries speaks for itself, and for you to deny my motion to Amend I did in Nov. 2007 was very cruel, so for the foregoing reasons I ask the 3rd Circuit Court to intervene, and overturn this decision, and put another judge instead of Chief Judge Gregory M. Scott on this, because he's too close to this. The letter dated March 9th 2000 explains why I say that. I have over 1,000 page journal, times dated that are proof and evidence in my case.

Since this lawsuit, I've been harassed, people holding vendettas against me, and being vindictive toward me, and disrespectful, because I am Muslim.

I can't help what I believe in and who I am, and I refuse to be disrespected, made a example of or used like

(Page three) a guinea pig. I'm not a scholar on law, but I do know my rights and I know the difference between right and wrong. So either the Defendants settle as I requested before, and not make a mockery of themselves or prepare for trial.

Written Feb 14th 08

Sincerely

Mr. Al-Muhammad Alak Shabazz
aka Mr Roger A. Derringer. SBD. 00241736
SHU Bldg 19 B-Lower 10

cc: Balick & Balick LLC Attorneys for CMS
Honorable Judge Gregory M. Abbott
(Shabazz file)

Exams my mom

**UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE**

GREGORY M. SLEET
UNITED STATES DISTRICT JUDGE

U.S. COURTHOUSE
844 KING STREET
LOCKBOX 19
WILMINGTON, DE 19801

(302) 573-6470
(302) 573-6472 FAX

March 29, 2000

I/M Muhammad Aleek Shabazz
SBI # 00241736, Unit # MSU
Delaware Correctional Center
Smyrna, DE 19977

Dear Mr. Shabazz:

I am writing in response to your letter of March 20, 2000 which you addressed to my assistant, Althea Brown, and mailed to the United States Attorney's office. The letter was forwarded to my chambers here at the U.S. Courthouse. I do not normally correspond directly with any litigant who is appearing before me, however, none of your matters are assigned to me. Additionally, I write out of courtesy to your mother for whom I hope all else is well.

I am sorry to hear of the difficulties you appear to be having within the Delaware prison system. You have asked that I let you know if I can help or have someone see you. Unfortunately, because of my current position as a judge, the answer to both questions is, no. I am no longer in a position to investigate the circumstances surrounding the incarceration of any one person, or, for that matter, complaints about general prison conditions. My involvement in matters of the nature you describe in your letter, or any other civil or criminal matter, does not begin until a lawsuit, a habeas petition, etc., is filed, or an indictment is handed down, and the matter is assigned to my docket. This assignment occurs on a random basis. Contrary to what you indicate in your letter, Judge Longobardi's cases have not been assigned to me. They have been distributed among the judges of the court. As I have already noted, I have checked and none of your matters appears on my docket.

While I am sure this is not the news you wanted to hear, I am unable to report anything else to you at this time.

Very truly yours,


GREGORY M. SLEET

BALICK & BALICK LLC
ATTORNEYS

August 22, 2007

Sidney Balick

Adam Balick

Joanne Ceballos

James Dmiec

Mr. Al-Muhammad Aleek Shabazz
a/k/a Roger L. Dennis, Jr.
SBI # 241736
Delaware Correctional Center
1181 Paddock Rd.
Smyrna, DE 19977

Re: *Shabazz v. Correctional Medical Services*.
C.A. No. 06-372 GMS

Dear Mr. Shabazz:

As you are aware, I represent the defendant in the above-referenced action. I write to raise two issues: First, I noticed that on August 21, 2007, you filed with the Court the letter I sent to you on August 9, 2007 asking you to execute and return to me the medical records authorization form I also sent you. If you do not intend to execute that form, please let me know at once.

Second, I have reviewed your Answers to CMS's Interrogatories and they are deficient in the following manner: Numbers 1, 2, and 3 each request information about you from the ten year period PRIOR to your current incarceration. You have responded only with information that is current. Please provide the information requested.

Number 5 asks you to identify "with specificity" the injuries you claim CMS is responsible for. Your first entry reads "Back Lower Disc". Are you contending that CMS is responsible for injuring one of the discs in your lower back? If so, please indicate the level at which the injury occurred and the date and manner in which it occurred. Please also confirm that you are now contending that CMS is also responsible for your asthma, high blood pressure and difficulty breathing.

Please provide this information so that we can avoid the inconvenience and expense of a motion to compel. Pursuant to Local Rule 7.1.1, this letter constitutes my attempt to communicate with you prior to the filing of a motion to compel.

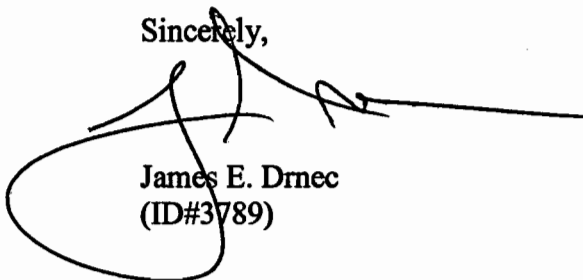
I also note that your most recent filing with the Court included a substantial number of documents. I have not, however, received any written responses to CMS's

Mr. Al-Muhammad Aleek Shabazz
August 22, 2007
Page 2-

Requests for Production of Documents, which was filed on August 10, 2007. I remind you that you must file a written response in addition to producing documents. Given the nature of the documents you have produced to date, I hope that you have additional documents as a number of categories have not been produced.

Thank you for your time. I look forward to hearing from you.

Sincerely,

A handwritten signature in black ink, appearing to be "James E. Drnec", written over the typed name and ID number. The signature is stylized with a large loop at the end.

James E. Drnec
(ID#3789)

JD/jz

29

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

AL-MUHAMMAD ALEEK SHABAZZ)

a/k/a Roger L. Dennis, Jr.)

Plaintiff,)

v.)

Civ. Action No. 06-372-GMS)

FIRST CORRECTIONAL MEDICAL)

SERVICES and CORRECTIONAL)

MEDICAL SERVICES, INC.,)

Defendants.)

MEMORANDUM

I. BACKGROUND

The plaintiff, Al-Muhammad Aleek Shabazz ("Shabazz"), an inmate at the Delaware Correctional Center ("DCC") filed this action pursuant to 42 U.S.C. § 1983. He appears *pro se* and was granted leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. (D.I. 3.) Shabazz's first amended complaint alleges that the defendants were deliberately indifferent to his serious medical needs after he sustained an injury to his ear. Pending before the court is the defendant, Correctional Medical Services, Inc.'s ("CMS") motion to dismiss pursuant to 18 Del. C. § 6853 and Shabazz's response thereto. (D.I. 21, 23.) Also before the court is Shabazz's motion to amend and for appointment of counsel. (D.I. 28.)

II. DISCUSSION

A. Motion to Dismiss

Rule 12(b)(6) permits a party to move to dismiss a complaint for failure to state a claim upon which relief may be granted. Fed. R. Civ. P. 12(b)(6). The court must accept all factual allegations in a complaint as true and take them in the light most favorable to plaintiff. *Erickson*

v. Pardus, –U.S.–, 127 S.Ct. 2197, 2200 (2007); *Christopher v. Harbury*, 536 U.S. 403, 406 (2002). A complaint must contain “a short and plain statement of the claim showing that the pleader is entitled to relief,” in order to ‘give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.’” *Bell Atl. Corp. v. Twombly*, –U.S.–, 127 S.Ct. 1955, 1964 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)); Fed. R. Civ. P. 8. A complaint does not need detailed factual allegations, however “a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitlement to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Id.* at 1965 (citations omitted). The “[f]actual allegations must be enough to raise a right to relief above the speculative level on the assumption that all of the allegations in the complaint are true (even if doubtful in fact).” *Id.* (citations omitted). Shabazz is required to make a “showing” rather than a blanket assertion of an entitlement to relief. *Phillips v. County of Allegheny*, No. 06-2869, 2008 WL 305025, at *5 (3d Cir. 2008). “[W]ithout some factual allegation in the complaint, a claimant cannot satisfy the requirement that he or she provide not only “fair notice,” but also the “grounds” on which the claim rests. *Id.* (citing *Twombly*, 127 S.Ct. at 1965 n.3.) Therefore, “stating . . . a claim requires a complaint with enough factual matter (taken as true) to suggest’ the required element.” *Phillips v. County of Allegheny*, 2008 WL 305025, at *6 (quoting *Twombly*, 127 S.Ct. at 1965 n.3.) “This ‘does not impose a probability requirement at the pleading stage,’ but instead ‘simply calls for enough facts to raise a reasonable expectation that discovery will reveal evidence of’ the necessary element.” *Id.* Because the plaintiff proceeds *pro se*, his pleading is liberally construed and his complaint, “however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers. *Erickson v. Pardus*, –U.S.–, 127 S.Ct. 2197, 2200 (2007)

(citations omitted).

CMS moves to dismiss with prejudice any medical negligence claim that Shabazz may advance on the basis that he did not timely file an affidavit of merit as is required for state medical negligence claims pursuant to 18 Del. Code § 6853(a)(1). In Delaware, medical malpractice is governed by the Delaware Health Care Negligence Insurance and Litigation Act. Del. Code Ann. tit. 18 § 6801(7). When a party alleges medical negligence, Delaware law requires the party to produce expert medical testimony detailing: (1) the applicable standard of care, (2) the alleged deviation from that standard, and (3) the causal link between the deviation and the alleged injury.” *Bonesmo v. Nemours Found.*, 253 F. Supp. 2d 801, 804 (D. Del. 2003) (quoting *Green v. Weiner*, 766 A.2d 492, 494-95 (Del. 2001)) (internal quotations omitted); Del. Code Ann. tit. 18 § 6853. The complaint makes no reference to a medical malpractice claim, nor did Shabazz include an affidavit of merit signed by an expert witness with his complaint as is required. Indeed, the complaint speaks specifically to constitutional violations pursuant to 42 U.S.C. § 1983. Therefore, the court will grant CMS’ motions to dismiss pursuant to Del. Code Ann. tit. 18 § 6853.

B. Motion to Amend

Shabazz moves to amend the complaint to add condition of confinement claims for acts that occurred in November 2007, specifically, the alleged lack of running water for three days. (D.I. 28.) He also complains of “illegal write-ups”, lack of medication for several days, and other various complaints. Shabazz’s original complaint seeks recovery for deliberate indifference to his serious medical needs as a result of an injury he sustained on March 23, 2006.

“After amending once or after an answer has been filed, the plaintiff may amend only

with leave of the court or the written consent of the opposing party, but 'leave shall be freely given when justice so requires.'" *Shane v. Fauver*, 213 F.3d 113, 115 (3d Cir. 2000) (quoting Fed. R. Civ. P. 15(a)). Amendment, however, is not automatic. See *Dover Steel Co., Inc. v. Hartford Accident and Indem.*, 151 F.R.D. 570, 574 (E.D. Pa. 1993). The court has discretion to deny leave to amend when there exists undue delay, bad faith, dilatory motive or undue prejudice to the opposing party, or when the amendment would be futile. See *Foman v. Davis*, 371 U.S. 178, 182 (1962); *In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1434 (3d Cir. 1997).

Shabazz moves to add claims totally unrelated to his original complaint. "The court will not allow an expansion of the instant action to include other matters unrelated to the initial claims because they do not arise out of the same transactions or occurrences upon which the original action is premised." *Jackson v. Taylor*, NO. CA 05-823, 2007 WL 2065244 (D. Del. July 17, 2007); Fed. R. Civ. P. 15. Accordingly, the court will deny Shabazz's motion to amend.

C. Motion for Appointment of Counsel

In Shabazz's motion to amend, he makes a brief request for appointment of counsel. A *pro se* litigant proceeding *in forma pauperis* has no constitutional or statutory right to representation by counsel. See *Ray v. Robinson*, 640 F.2d 474, 477 (3d Cir. 1981). *Parham v. Johnson*, 126 F.3d 454, 456-57 (3d Cir. 1997). The "decision to appoint counsel may be made at any point in the litigation, and may be made by a district court *sua sponte*." *Montgomery v. Pinchak*, 294 F.3d 492, 499 (3d Cir. 2002). It is within the court's discretion to seek representation by counsel for the plaintiff, but this effort is made only "upon a showing of special circumstances indicating the likelihood of substantial prejudice to [plaintiff] resulting . . . from [plaintiff's] probable inability without such assistance to present the facts and legal issues to the

court in a complex but arguably meritorious case.” *Smith-Bey v. Petsock*, 741 F.2d 22, 26 (3d Cir. 1984); *accord Tabron v. Grace*, 6 F.3d 147, 155 (3d Cir. 1993)(representation by counsel may be appropriate under certain circumstances, after a finding that a plaintiff’s claim has arguable merit in fact and law). After passing this threshold inquiry, the court considers various factors when assessing a request for counsel, including: (1) the plaintiff’s ability to present his or her own case; (2) the difficulty of the particular legal issues; (3) the degree to which factual investigation will be necessary and the ability of the plaintiff to pursue investigation; (4) the plaintiff’s capacity to retain counsel on his own behalf; (5) the extent to which a case is likely to turn on credibility determinations; and (6) whether the case will require testimony from expert witnesses. *Tabron*, 6 F.3d at 155-57; *accord Parham*, 126 F.3d at 457; *Montgomery v. Pinchak*, 294 F.3d at 499.

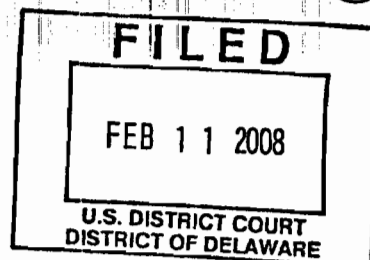
Shabazz has shown that he is able to clearly articulate the alleged facts. The factual issues in the case are not complicated. He has exhibited his ability to obtain discovery and it appears his discovery requests are being responded to by defendants. Finally, at this juncture, it does not appear that expert witness testimony is necessary. Accordingly, the court will deny without prejudice the motion for appointment of counsel. (D.I. 28.)

III. CONCLUSION

Based upon the foregoing analysis, the court will grant CMS’ motion to dismiss and will deny Shabazz’s motion to amend and for appointment of counsel. An appropriate order will be entered.

Feb 11, 2008
Wilmington, Delaware


CHIEF UNITED STATES DISTRICT JUDGE



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

AL-MUHAMMAD ALEEK SHABAZZ)
a/k/a Roger L. Dennis, Jr.)

Plaintiff,)

v.)

FIRST CORRECTIONAL MEDICAL)
SERVICES and CORRECTIONAL)
MEDICAL SERVICES, INC.,)

Defendants.)

Civ. Action No. 06-372-GMS

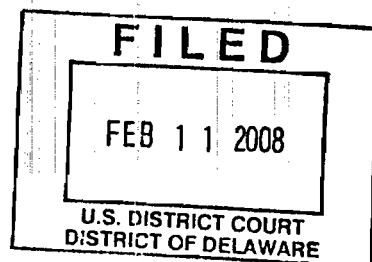
ORDER

At Wilmington this 11th day of Feb, 2008, for the reasons set
forth in the Memorandum issued this date

1. Defendant Correctional Medical Services, Inc.'s motion to dismiss pursuant to 18 Del.
C. § 6853 is **GRANTED**. (D.I. 21.)

2. Shabazz's motion to amend is **DENIED** and motion for appointment of counsel is
DENIED without prejudice. (D.I. 28.)


CHIEF UNITED STATES DISTRICT JUDGE



August 24th 07

Mr. Al-Muhammed Alcock Shabazz
 aka Roger A. Dennis Jr.
 DSD. 00241736
 Delaware Correctional Center
 1181 Paddock Rd.
 Smyrna, Dela 19977

Re: Shabazz v. Correctional Medical Services
 C.A. No. 06-3726ms

Dear Mr. Dennis:

I am aware you represent the defendants in the above-referenced action. I sent the Court the same info I sent you. That way it won't be no discrepancies. I am no lawyer nor a scholar, but I know how the system works with all due respect. I was going to sign to release my medical records, but the Defendants refused to sign. If you look in the package I sent and read the letter that explained.

Second you said I was deficient in my answer to CMS Interrogatories: 1, 2, 3 you said request info about me prior 10yrs before my incarceration. I worked for my family's business in my homeland Accomack VA Landscaping And Construction.

No. 5th CMS is responsible for not acting on his orders for Treatment to lower back Dis., and I had to wait 5 1/2 yrs before they gave me my

(Page II) proper backspace back, and I was re-injured by fall when I was working in the kitchen. As far as my asthma, high blood pressure, and difficulty breathing that was explained in the interrogatories and in my journal notes, and medical expenses which cost me to lose my job in the kitchen.

Honorable Mr. Deane Sir; I'm not a attorney, and as I said I'm no scholar with the law, but I've done my homework, and research, and I know I have a very strong, and winning case. I won't back-down by any means.

I have my witnesses and I'm asking your Honorable Court to have them all subpoenaed if this goes forth to trial.

I have a whole lot of documents to produce, but I don't have a job, and I only get money from family every now and then, and plus the Court takes a percentage to pay for this lawsuit when I do get money from family for personal hygiene so forth.

Plus I am a muslim and I pay my Zakat which means Charity for my Blessings from the Almighty Allah (God).

At this time I can't pay for medical Documents to go out. Is there another way?

(Pg III) Please get back to me A.S.A.P. Plus my mother has a whole file of my legal papers at home. Her name is Ms. Gloria J. Dennis 302-998-2333 Home. Cell 302-898-1255.

Sincerely,

M. Al. Muhammad Alak Shabazz

252.00241736

Thanks for your time cooperation.

My ex-fiance Sherry L. Schaff has a box of legal documents and plus she used to work here as a nurse as you see in my answering Interrogatories.

Re: Shabazz v. CMS
C.A. No. 06 - 372 GMS

Page I

Sol. Balick & Balick Defense for Defendants

This is A Non-Binding Motion for you to have
The last day of My sentence vacated and have CMS
Pay I the Plaintiff \$250,000 To Make all this go
Away.

1) If you decide to settle this; This is the terms that
I hope and pray we could agree upon, but if not
I'll pursue to push for a trial and have all my
witness subpoenaed.

2) To me it would be a waste of the states money
when they are already crying wolf for more money
to build, and add more prisons, when these prisons
conditions, and medical situations stays in the news-
papers daily.

3) I don't want this long and drawn out, but I don't
walk away empty handed for all the negligent
and inadequate treatment I've been through.

4) With all due respect, if they would have properly
done their jobs more of us would be in this
position.

5) All medical personnel aren't bad, and its sad you
got nurses quitting and leaving, because they don't
like the way we are being treated, and the way
they are being treated.

Page II

This is my motion. Please get back to me with your immediate response.

Sincerely

Mr. Al-Muhammad Alack Halay
SBI 00241736

Aug 24th 07

BALICK & BALICK LLC
ATTORNEYS

Al-Muhammad Aleek Shabazz
a/k/a Roger L. Dennis, Jr.
SBI #241736
1181 Paddock Rd.
Smyrna DE 19972



RECEIVED

AUG 2 4 2007

Delaware Correctional Center

LEGAL
DOCUMENTS

711 King Street • Wilmington, Delaware 19801

1997-89679 R003

BALICK & BALICK LLC
ATTORNEYS

Sidney Balick

Adam Balick

Joanne Ceballos

James Dmcc

August 22, 2007

Mr. Al-Muhammad Aleek Shabazz
a/k/a Roger L. Dennis, Jr.
SBI # 241736
Delaware Correctional Center
1181 Paddock Rd.
Smyrna, DE 19977

Re: *Shabazz v. Correctional Medical Services.*
C.A. No. 06-372 GMS

Dear Mr. Shabazz:

As you are aware, I represent the defendant in the above-referenced action. I write to raise two issues: First, I noticed that on August 21, 2007, you filed with the Court the letter I sent to you on August 9, 2007 asking you to execute and return to me the medical records authorization form I also sent you. If you do not intend to execute that form, please let me know at once.

Second, I have reviewed your Answers to CMS's Interrogatories and they are deficient in the following manner: Numbers 1, 2, and 3 each request information about you from the ten year period PRIOR to your current incarceration. You have responded only with information that is current. Please provide the information requested.

Number 5 asks you to identify "with specificity" the injuries you claim CMS is responsible for. Your first entry reads "Back Lower Disc". Are you contending that CMS is responsible for injuring one of the discs in your lower back? If so, please indicate the level at which the injury occurred and the date and manner in which it occurred. Please also confirm that you are now contending that CMS is also responsible for your asthma, high blood pressure and difficulty breathing.

Please provide this information so that we can avoid the inconvenience and expense of a motion to compel. Pursuant to Local Rule 7.1.1, this letter constitutes my attempt to communicate with you prior to the filing of a motion to compel.

I also note that your most recent filing with the Court included a substantial number of documents. I have not, however, received any written responses to CMS's

Mr. Al-Muhammad Aleek Shabazz

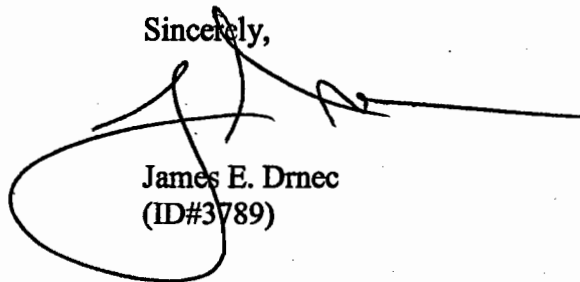
August 22, 2007

Page 2-

Requests for Production of Documents, which was filed on August 10, 2007. I remind you that you must file a written response in addition to producing documents. Given the nature of the documents you have produced to date, I hope that you have additional documents as a number of categories have not been produced.

Thank you for your time. I look forward to hearing from you.

Sincerely,

A handwritten signature in black ink, appearing to read 'James E. Drnec', is written over the typed name. The signature is stylized with a large loop at the beginning and a long horizontal stroke extending to the right.

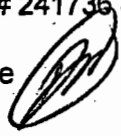
James E. Drnec
(ID#3789)

JD/jz



STATE OF DELAWARE
DEPARTMENT OF CORRECTION
OFFICE OF THE DEPUTY WARDEN
DELAWARE CORRECTIONAL CENTER

1181 Paddock Road
SMYRNA, DELAWARE 19977
Telephone: (302) 653-9261
Fax: (302) 659-6668

TO: IM Roger Dennis SBI# 241736 SHU 17 CL7
FROM: Deputy Warden Pierce 
DATE: January 22, 2007
RE: Property and Staff Issues

I received your letter dated December 28, 2006, regarding your property and staff and have forwarded your concerns to S/Lt. Dotson for his investigation and action.

DP/dc
Attachment
cc: S/Lt. Dotson
File

You told me you'll help me & not
play games with me. I'm
holding you to that!

RECEIVED

JAN 05 2007

to: Deputy Warden David Peice

from: W. Muhammad Aliak Halay, alias Mr. Lopez Senary.

DBP 00041738 Bly 17C-17* SMH

DEPUTY WARDEN I

Yesterday, after my visit with family, my
property finally brought to me at 10am. I left it tillingsworth. First of all I got receipts,
and paperwork on everything I didn't get and I didn't get all my commissary, and
she smartly told me that if I didn't sign my TV, Radio, headphones over I would be
written up fine write it up its my property. She threw my 2 year paper bag
thru the flap on the floor which was very disrespectful, and shoved all my
stuff on the floor. She never gave me a copy of any of my property of
my inventory which is a violation, and I have officers to witness the
disrespect of this female officer. I filed a grievance, and paperwork on this
I'm informing you, because I know the grievance board hearing officers, and every
one is going to try to let her get away, because she's one of their own. I'm
here for bogus write ups never seen, I've been humiliated, disrespected,
and now the big guns step in my father, people my Aunt that works in the
Pentagon & Aunt and Uncle both Federal Agents FBI. I've tried to be civil
but this prison continuously wants to play games. Have me in the hospital
psychic rooms 21 days taking showers. Transported me & got sores on foot and
all that skin rashes all that, and medical Don't want to do their
job. You leave me know choice. I'll hold off my aunts and uncles, and my family that's
senators and that's in Congress until I see what they do at BOP Maryland even
though I already know what they are going to do nothing. After 11 days I'm
Back to business doing that week I'm unleashing my people letting
them do what should've been done a long time ago. I'm not going to let
this prison keep humiliating me. Doing what they want and think they
are going to get away with. No messes, fixings, cell phones, drugs all
that crap I know about all of it and how its getting in and by whom.
I'll pull all their cards for what they did to me.

W. Muhammad Aliak Halay
alias Mr. Lopez Senary

Memo

~~To: /M Muhammad A. Shabazz #241736 (E building)~~

From: Major James Scarborough

Date: 11-01-06

Subject: letter of complaint against staff

I have read your letter and forwarded it to Unit Commander, Captain Karl Hazzard for his investigation.

Major James Scarborough
Security Superintendent

Cc: Captain Karl Hazzard
file



STATE OF DELAWARE
DEPARTMENT OF CORRECTION
245 McKEE ROAD
DOVER, DE 19904

Carl C. Danberg
Commissioner

(302) 739-5601
Fax: (302) 739-8221

February 27, 2007

Al-Muhammad Aleek Shabazz
SBI# 00241736
Delaware Correctional Center
1181 Paddock Road
Smyrna, DE 19977

Dear Mr. Shabazz,

I am in receipt of your letter dated February 12th.

I have forwarded your letter to Jim Welch, Medical Director to investigate.

Sincerely,

A handwritten signature in black ink, appearing to be "C. Danberg", written over a circular stamp.

Carl C. Danberg
Commissioner

cc: t-file 20

CCD:imd



STATE OF DELAWARE
DEPARTMENT OF CORRECTION
OFFICE OF THE DEPUTY WARDEN
DELAWARE CORRECTIONAL CENTER
1181 Paddock Road
SMYRNA, DELAWARE 19977
Telephone: (302) 653-9261
Fax: (302) 659-6668

Lawrence A. McGuigan

MEMORANDUM

TO: Inmate Roger Dennis, AKA Muhammad Shabazz
SBI# 241736
MHU 21 BU3B

FROM: Lawrence McGuigan
Deputy Warden

DATE: June 18, 2002

RE: Back Brace

Relevant to our recent conversation, I requested that medical perform an evaluation on your ongoing requests for a back brace.

Medical has advised me that, at this time you do not require a back brace. Should you wish further clarification, feel free to write to the Medical Department.

LAM/dc

cc: Deputy Warden Burris
Captain Henry
Robbie Hampton/Medical
Inmate File

April 4, 2006

Al Muhammad Aleek Shabazz, 241736

22

BL11

I believe our letters may be crossing in the mail. After I saw you on 3/28/06, I met with Miss Mattie about your ear. She said she would have Nurse Quani come to see you. It sounds like that did not go well. I will copy that letter to Miss Shirell for review. I also sent a memo to the phone staff - Miss Courtni to check on the problems with your mother's number. I will keep you posted as I receive responses.

Thank you,

Cindy Atallian
Counselor - 22

AMS.
Received
4-05-06 Wednesday

April 11, 2006

Al Muhammad Aleek Shabazz, 241736

22

BL11

Your phone sheet was submitted with your mother's new number – 302-998-2333. You should be able to make calls now. I advised Mental Health staff that you wanted to speak to them as well.

Thank you,

Cindy Atallian
Counselor – 22

SPEED LETTER

FROM

Cindy Atallah
Counselor - 22

TO

Al Muhammad Alkashab
241736
22 BL11

SUBJECT:

MESSAGE

I met with medical about your medication issue. This should have been corrected by now. If not, please notify me immediately. I also completed a Chaplaincy referral.

Thank you.

DATE

03/22/06

SIGNED

C.A.

REPLY:

DATE

SIGNED

FORM #: 535

SEND PARTS 1 & 2 INTACT. PART 2 WILL BE RETURNED WITH REPLY. RETAIN PART 3 FOR FILE.

April 20, 2006

Muhammad Aleek Shabazz, 241736

22

BL11

I received your letter. Your phones should be working now for you to call your mother. If not let me know. I have placed you on the list for a classification for Family Problems, but I have 40 people for this month, so I must get them out of the way first. It might not be possible to have this finalized until May, but I will see if the Lt. has any extra room. It looks pretty full now. Also, I will bring up your case to the Mental Health meeting staff next week about your ear if nothing has been done. Please let me know something before Wednesday of next week. If I see Miss Shirell, I will let her know about the concerns that you have expressed.

If you have any other concerns or questions, just let me know.

Thank you,

Cindy Atallian
Counselor – 22

ppope
mmate on
3/19/04 Wm

To: Brenda Holweida (Supervisor)

From: Al-Muhammad Aleek Shabazz
alias: Roger Dennis Jr. BBL 00241736
MHU Bldg 21 B-Dowen 3#

Dear Ms. Holweida,

I filed a grievance to you about my medical situation, and I'm concerned, because I still haven't heard back from you yet, and I'm still having the same problem with my stomach, left side, near my kidney, and sharp pains from my upper Chest down near my heart, and my back. This has been going on 4 weeks now. Dr. Doretta Brown ordered malox for my stomach, and still there is no change. Brenda I come to you, because I trust you, and I know you will make sure everything is properly handled. I told you before that (MA) Adrienne Branch also told Dr. Brown about the problem, and then when she saw me again the Days I filed the grievance I was charged. Something is wrong Brenda! I know my body. Sometimes when I get up I fall to my knees, because I have no feeling in ~~my~~ my whole left side arm, leg all the way down. They drew Blood Thursday March 11th 04 Nurse Tonja Smith but I don't know the lab results. I haven't got my PPD yet, plus I feel a EKG, and X-Rays should be ran. Please get back to me A.S.A.P.

Sincerely,
Mr. Al-Muhammad Aleek Shabazz
Bldg 21 B-Dowen 3#

21

GRIEVANCE REPORT**OFFENDER GRIEVANCE INFORMATION**

Offender Name : DENNIS, ROGER L	SBI# : 00241736	Institution : DCC
Grievance # : 2025	Grievance Date : 03/10/2004	Category : Individual
Status : Unresolved	Resolution Status :	Inmate Status :
Grievance Type: Health Issue (Medical)	Incident Date : 03/10/2004	Incident Time : 14:30
SC : Merson, Lise M	Housing Location : Bldg 21, Lower, Tier B, Cell 3, Bottom	

OFFENDER GRIEVANCE DETAILS

Description of Complaint: Cramping in my stomach. Dr. brown charged him \$4.00 because she said I never mentioned the problem at my chronic care visit. I did and she should have treated me then. I had a friend who died of stomach cancer here for some of the same symptoms and Dr. Brown ask me if i worry alot and I said yes I do when it comes to my health.

Remedy Requested : I request to get another opinion from another medical proffessional and a EKG is done blood test ran, and tat proper steps are taken to resolve this matter with my health. I'm very worried until I get proper diagnosis and then we go from there.

INDIVIDUALS INVOLVED

Type	SBI#	Name
------	------	------

ADDITIONAL GRIEVANCE INFORMATION

Medical Grievance : YES	Date Received by Medical Unit : 03/12/2004
Investigation Sent : 03/12/2004	Investigation Sent To : Kratsas, Gina
Grievance Amount :	

NAME: Alexis Rizer SBI#: 241236

LOCATION: Mhu 21 DATE: 3/19/04

Please schedule with:

MD: Dr. Alie

NP/PA: _____

NSC: _____

For: wants EKG, eval for Ca⁺
? CEA

INFORMAL RESOLUTION

OFFENDER GRIEVANCE INFORMATION

Offender Name : DENNIS, ROGER L	SBI# : 00241736	Institution : DCC
Grievance # : 2025	Grievance Date : 03/10/2004	Category : Individual
Status : Unresolved	Resolution Status:	Inmate Status :
Grievance Type: Health Issue (Medical)	Incident Date : 03/10/2004	Incident Time : 14:30
GC : Merson, Lise M	Housing Location : Bldg 21, Lower, Tier B, Cell 3, Bottom	

INFORMAL RESOLUTION

Investigator Name : Kratsas, Gina

Date of Report 03/12/2004

Investigation Report :

Reason for Referring:

Offender's Signature:

X Al-Muhammad A. Shabay aka R. Dennis Jr.

Date

3-19-04

Witness (Officer)

Frederick L. Verda Ransons

*Set idler. Alie for eval
for need of EKG +
testing for cancer.*

January 29, 2007

Mr Dennis

I understand your request is for a MRI, however a Physician must request a MRI before you can be scheduled for one. I understand you have gone to both of the outside consults on the same day last week. I will forward your nursing and physician complaints to the DON Eller for investigation, along with a copy of your letter and my response.

Thank you

Deborah Rodweller, Medical

